

ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

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COMMERCE COMMISSION

2006 NOV 17 P 2: 41

CHIEF CLERK'S OFFICE

**Clinton A. Krislov,
for himself and as
Class Counsel**

Docket No. 06-0421

**Petition for a Declaratory Ruling
that Illinois Bell Telephone
Company's Billing practices
are in violation of the Illinois
AdministrativeCodeSection 735.160(a))**

REPLY OF ILLINOIS TELECOMMUNICATIONS ASSOCIATION

NOW COMES THE ILLINOIS TELECOMMUNICATIONS ASSOCIATION ("ITA"), by and through Donald L. Woods, one of its attorneys, and hereby files its Reply to the Response of Complainant to the ITA's Petition to Intervene in the above captioned cause.

I. Background and Procedural History

The ITA's Petition to Intervene stated that: the ITA is an organization composed of Illinois telecommunications carriers authorized to and doing business in the State of Illinois and regulated by the Illinois Commerce Commission; this docket, under its current guise, could impact the members of the ITA to their prejudice, in that the decision could be viewed as precedential in the event that a similar complaint were filed against any of the ITA's members and; this outcome would eventuate even though none of the ITA members (other than Illinois Bell) would have ever had the opportunity to be heard on any of the litigated issues.

thereby depriving them of their due process rights. Accordingly, the ITA asked that it be allowed to intervene in this matter to protect the interests of its membership.

Pursuant to a schedule established by the Administrative Law Judge ("ALJ"), a Response was duly filed by Complainant. The Response consists of a brief response to the substantive issue raised by the ITA's Petition to Intervene followed by a lengthy appeal to the ALJ, apparently asking for equitable relief in the form of the ALJ imposing improper conditions upon the ITA's participation. The Complainant's substantive argument is unconvincing, while imposing the conditions would be unlawful. Accordingly, both must be rejected.

II. Complainant's Substantive Response

Complainant's Response begins by noting that the ITA is a trade organization and that it will purportedly not be directly affected by the outcome of this docket. (Complainant's Response at 1). The ITA does not disagree with the observation that it is not a public utility, but notes that no argument ever flows from this observation, from which the ITA infers that it is rhetorical in nature, not argumentative and, therefore, does not require a reply. The Response then goes on to surmise, without basis, that the ITA's Petition to Intervene was instigated by AT&T and to guess that some ITA members may be in the same position as AT&T in the utilization of non-postmarked communications with customers. The source of this conjecture is not specified and its import not explained, again calling into question the necessity of reply.

The ITA's purpose in seeking intervention was clearly stated in its Petition to Intervene. The Commission's interpretation of its rules, including Rule 735.160(a),

is of interest to the ITA, as a trade organization comprised of many carriers subject to those rules. Complainant's response does not respond to any of the matters contained in the ITA's Petition which should, accordingly, be granted.

II. Complainant's Proposed Conditions

After making the baseless rhetorical assertions and assumptions noted above, Complainant then, graciously, indicates his willingness to withdraw his unspecified objections to the ITA's participation *only if* the ALJ conditions that participation upon the ITA's members becoming party defendants to this matter through the imposition of conditions upon the ITA's participation. The conditions would include answering discovery requests regarding the billing practices of each company and each and every ITA member being "fully bound" by any final determination of the Commission. (Complainant's Response at 1)

Complainant's request for conditions must be rejected as a thinly disguised attempt to convert this docket into a class action involving both plaintiff and defendant classes. In support of this argument, the ITA notes that Mr. Krislov has not asserted and, based upon information and belief, cannot assert that he is customer of any of the ITA companies, other than Illinois Bell and has conceded this fact in his response. (See Complainant's Response at 1). Given this fact, an order making all of the ITA companies parties to this matter would effectively result in his pursuing relief on behalf of all customers of the ITA member companies, making him the representative of a plaintiff class consisting of those customers. Further, Mr. Krislov's proposal that all ITA members be fully bound by any eventual

Commission effectively creates a defendant class consisting of all ITA members, apparently with Illinois Bell as the class representative.

The Commission, however, has specifically prohibited complainants from filing class actions at 83 Ill. Adm. Code 200.95, which is entitled "Class Actions Prohibited." In addition, it is well established that the Commission's lack of class action authority results in utility customers being unable to represent other similarly situated persons. (*Moncada v. Illinois Comm. Com'n* (1st Dist. 1991), 212 Ill.App.3d 1046, 571 N.E.2d 1004, appeal denied 141 Ill.2d 544, 580 N.E.2d 118). These authorities prohibit the Commission from adjudicating claims involving either defendant or plaintiff classes, and require rejection of the conditions proffered by Complainant.

The final point to be made in the class action arena is that the Commission should see that Mr. Krislov's request that the ITA members be subject to discovery is simply a request that the Commission be captain and crew for his fishing expedition to net class action clients, an invitation the ALJ and Commission should reject as an unseemly three hour cruise to nowhere.

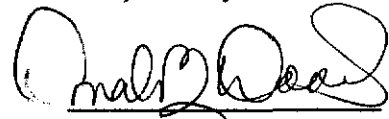
In the alternative, and only in the event the ALJ is not persuaded that imposing the conditions would result in the improper establishment of a class action, the ITA raises two additional arguments. First, as mentioned above, Mr. Krislov has not asserted that he is a customer of any of the ITA companies (other than Illinois Bell). He therefore has no standing to seek an order against the interests of any of those companies.

Second, Mr. Krislov has not cited any statutory or regulatory source for the authority of the ALJ to impose the conditions he has requested in this docket. Section 10-110 of the Public Utilities Act (220 ILCS 5/10-110) sets forth the rights and obligations of intervenors in Commission proceedings. These rights include the opportunity to be heard and present evidence and are expanded upon in the Commission's Rules, which establish an intervenor's right to comment in briefs and oral argument upon any matter addressed in the proceeding. The obligations of intervenors include the requirement that, upon being so required by an ALJ, an intervenor must state whether it intends to be an active party to a proceeding and that any Intervenor, except for good cause shown, must accept the status of a proceeding at the point of beginning intervention. (See, 83 ILL. Adm. Code 200.200 (d), (e))

The ITA commits that it will accept the status of this matter as it currently exists and will comply with the current schedule. While there has been no formal request by the ALJ, the ITA also commits that it and only it, as opposed the ITA's members (other than Illinois Bell) will be an active party to this matter . These are the only legal obligations that pertain to intervenors in Commission proceedings and the imposition of any of the conditions proffered by Complainant would go well beyond that statutory or regulatory authority. Because the authority of the Commission is limited to the powers granted by statute and pursuant to rule (*Moncada*) the ITA submits that the ALJ and the Commission are without the authority to impose the conditions proffered by Mr. Krislov, "Class Counsel."

Accordingly, the ITA moves the Administrative Law Judge to grant the ITA's Petition to Intervene and allow it to participate as an active party, pursuant to section 10-110 of the Public Utilities Act and section 200.200 of Code Part 83 of the Illinois Administrative Code. The Administrative Law Judge must also reject the conditions proffered by Complainant as unlawful, unwarranted and unseemly.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Donald L. Woods", written over a horizontal line.

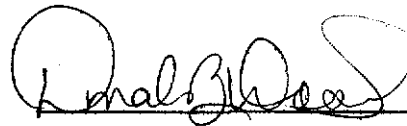
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November 17, 2006

Counsel for Intervenor
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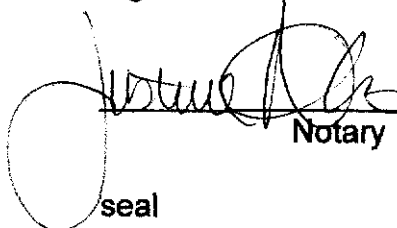
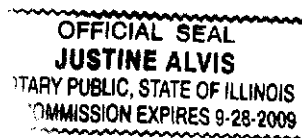
VERIFICATION

Now comes the undersigned, Donald L. Woods, attorney in fact for the Illinois Telecommunications Association and, having been duly sworn, attests that he has read the contents of the Reply of the Illinois Telecommunications Association and that the matters contained therein are true and correct to the best of his knowledge and belief.



Donald L. Woods

Signed before me this Seventeenth day of November, 2006.


Notary
seal

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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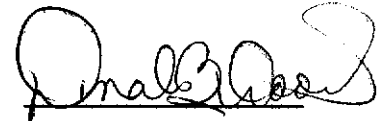
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NOTICE OF FILING

PLEASE TAKE NOTICE that we have, on this Seventeenth day of November, 2006, filed with the Illinois Commerce Commission, 527 E. Capitol, Springfield, Illinois, a Reply the Illinois Telecommunications Association, a copy of which is hereby served on you.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the above document, were served upon the parties to whom the notice was directed by electronic service from Springfield, Illinois, Seventeenth day of November, 2006.



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